

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HSBC BANK U.S.A.,

Plaintiff,

vs.

DORA A. CARBAJAL,

Defendant.

Case No. 3:11-cv-784-AJB-BGS

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
[DOC. NO. 2]**

On April 14, 2011, Dora A. Carbajal, a non-prisoner proceeding *pro se*, filed a Notice of Removal of case number 37-2010-00032112-CL-UD-SC from Superior Court of California, County of San Diego, to this Court [Doc. No. 1], along with a Motion to Proceed *in forma pauperis* [Doc. No. 2]. Defendant Carbajal submitted a declaration in support of a request to proceed *in forma pauperis* in accordance with 28 U.S.C. § 1915(a)(1) and Local Rule 3.2(a).

The Court finds that the Defendant's declaration of inability to pay costs or give security is insufficient to permit Defendant to proceed *in forma pauperis*. Permission to file a petition for writ of mandamus *in forma pauperis* will not be granted unless there is some merit in the petition. 28 U.S.C.A. § 1915. Although one need not be absolutely destitute to obtain benefits of statute dealing with proceedings *in forma pauperis* in federal courts, a motion to proceed *in forma pauperis* must state facts as to affiant's poverty with some particularity, definiteness and certainty. *See* 28 U.S.C.A. § 1915; *Jefferson v. U.S.*, 277 F. 2d 723 (9th Cir. 1960). The Defendant's motion fails to state with particularity, definiteness and certainty that such funds are insufficient to make such expenses and


1 pay under 28 U.S.C. § 1914(a) because of the following reasons:

- 2 • Defendant states current employment with wages of \$1,800.00 per month.
- 3 • Defendant has a primary residence worth \$270,000.
- 4 • Defendant owns a 2006 Hyundai Sonata outright.
- 5 • Defendant's expenses of "utilities, water, food, gas and any other expenses that may
- 6 occur" are not stated with particularity.
- 7 • Defendant has noted no debts or obligations except litigation.

8 It is under the Court's discretion to grant or deny permission to proceed *in forma pauperis*
9 based on the Defendant's claim. 28 U.S.C. § 1915(e)(2). Without further evidence, the Court lacks
10 specific facts to find that the Defendant is not able to pay the filing fee under 28 U.S.C. § 1914(a).
11 In light of this information, IT IS HEREBY ORDERED that Carbajal's Motion to Proceed *in forma*
12 *pauperis* is **DENIED** and the Complaint is **DISMISSED** without prejudice. Pursuant to this Order,
13 however, Defendant is granted 30 days leave to pay the \$350 filing fee required to maintain this
14 action pursuant to 28 U.S.C. § 1914, or to submit additional documentation regarding the
15 Defendant's economic status. **IF PLAINTIFF CHOOSES TO FILE ADDITIONAL**
16 **INFORMATION REGARDING HER POVERTY, SHE MUST ATTACH A COPY OF THIS**
17 **ORDER.**

18 **IT IS SO ORDERED.**

19
20 DATED: September 16, 2011

21 
22 Hon. Anthony J. Battaglia
U.S. District Judge